IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE EIGHTEENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

**THE HON'BLE MS JUSTICE G.ROHINI**

**WRIT PETITION NO : 5282 of 2005**

Between:

Smt. Archana, W/o Mohan, Hindu,
R/o H.No. 2-1-106 to 109, Old Nallakunta, Hyderabad.

**..... PETITIONER**

AND

1 The Commissioner of Municipal Corporation of Hyderabad, Tank Bund, Hyderabad.
2 The Chief City Planner, Municipal Corporation of Hyderabad Tankbund, Hyderabad.
3 The Assistant City Planner, MCH, Circle No.3, Abids, Hyderabad.
4 The Station House Officer, Nallakunta, P.S. Hyderabad.
5 Mr. A. Aravind Gupta, S/o Subrahmanyam Gupta, Hindu,
R/o H.No. 1-4-27/71/19, Padmashali Colony, Hyderabad.

**.....RESPONDENTS**

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ order or direction more particularly one in the nature of Writ of mandamus declaring the action of the respondents 1 to 4 as illegal, irregular, high handed against the provisions of the Secs. 428, 433, 435 and 452 in not demolishing the illegal construction made by respondent No.5 in the premises bearing No. 2-1-110 to 123 (Part), admeasuring 238 Sq. Yards situated at Old Nallakunta, Hyderabad, and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

**Counsel for the Petitioner :MS. K.N.VIJAYA LAXMI**

**Counsel for the Respondent No.4 : GP FOR HOME**

**Counsel for the respondents 1 to 3: Mr. Ghanta Rama Rao**

**The Court at the stage of admission made the following :**

**THE HON'BLE MS. JUSTICE G.ROHINI**

**WRIT PETITION NO.5282 OF 2005**

**ORDER :**

The petitioner claims to be the tenant of the premises bearing No.2-1-106 to 109, Old Nallakunta, Hyderabad, wherein she is running a Bakery. It is stated that the adjacent house bearing No.2-1-110 to 121 was purchased by the 5th respondent herein on 22-12-2003. Thereafter, he started construction of a commercial complex, residential complex and a cellar without obtaining any prior permission from the respondents 1 to 3 as required under Section 428 of the Hyderabad Municipal Corporation Act, 1955 (for short, 'the Act'). Complaining about the same, the petitioner made representations dated 2-12-2004, 15-07-2004 and 5-2-2005 to the 1st respondent requesting to take the necessary action, however the 1st respondent failed to take any action. It is alleged that the 5th respondent has also encroached upon the public road and that the constructions being made by him resulted in damage to the building in occupation of the petitioner. The petitioner lodged a

complaint with the fourth respondent – Station House Officer, Nallakunta, however no action has been taken and the 5th respondent in collusion with the respondents 1 to 4 has been proceeding with the unauthorised constructions. He filed O.S.No.2622 of 2004 on the file of the X-Junior Civil Judge, City Civil Court, Hyderabad, and obtained interim injunction dated 5-5-2004 against the respondents 1 to 3 herein. The respondents 1 to 3 deliberately suppressed the true facts in the counter filed in the said application for injunction and failed to properly contest the suit. The petitioner alleges that the respondents 1 to 4 have been colluded with the 5th respondent and thereby allowing him to proceed with the illegal constructions. Hence, this writ petition seeking a Writ of Mandamus declaring the action of the respondents 1 to 4 in not taking steps for demolition of the illegal constructions made by the 5th respondent as arbitrary or illegal and to direct them to take action forthwith to remove the said constructions.

As can be seen from the material on record, admittedly the alleged unauthorised constructions being made by the 5th respondent on the subject matter of O.S.No.2622 of 2004 pending on the file of X-Junior Civil Judge, City Civil Court, Hyderabad. It is also not in dispute that an interim injunction is in operation, by virtue of which the respondents 1 to 3 are restrained from taking steps for demolition of the alleged unauthroised constructions. Hence, I am unable to hold that there is any inaction on the part of the respondents 1 to 3 in taking the steps in accordance with the statutory provisions as alleged by the petitioner. At any rate, since the issue has already been seized by the competent Civil Court, if the petitioner is aggrieved it is always open to her to take the appropriate steps to get herself impleaded as party to the suit and to pursue the matter diligently, but it is not open to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. No Writ of Mandamus can be issued compelling the respondents to act in contravention of the order of injunction issued by the competent Civil Court.

The Writ Petition is misconceived and the same is accordingly dismissed. No costs.

However, this shall not preclude the petitioner to take the appropriate steps in O.S.No.2622 of 2004 on the file of X-Junior Civil Judge, City Civil Court, Hyderabad, if she so chooses.

18th March, 2005.

gbs

To

1 The Commissioner of Municipal Corporation of Hyderabad, Tank Bund, Hyderabad.
2 The Chief City Planner, Municipal Corporation of Hyderabad Tankbund, Hyderabad.
3 The Assistant City Planner, MCH, Circle No.3, Abids, Hyderabad.
4 The Station House Officer, Nallakunta, P.S. Hyderabad.
5.Two CCs to G.P. for Home, High Court of APBldgs, Hyderabad (OUT).

**6. Two CD copies.**